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PUBLIC INSTRUCTION

STATE GUIDANCE

To: All Child Nutrition Programs
From: Colleen Fillmore, Ph.D., R.D., L.D.
Child Nutrition Programs Director
Date: May 1, 2008
Subject: Prototype Language for Return of Discounts, Rebates and Credits to
School Food Authorities **Policy Memo SP-21-2008**

The final rule, Procurement Requirements for the National School Lunch, School Breakfast and Special Milk Programs, was published in the Federal Register on October 31, 2007. The rule explicitly: (1) limits a school food authority's (SFA's) use of nonprofit school food service account funds to costs resulting from proper procurements and contracts; (2) requires that allowable costs paid from the nonprofit school food service account be net of all discounts, rebates, and applicable credits; and (3) requires State agencies (SAs) to review and approve SFA procurements of food service management company services in advance of contract execution.

In response to several requests and to assist SAs and SFAs in their compliance efforts, we are providing the following prototype contract language requiring the return of purchase incentives to SFAs:

"The _____ School District shall ensure that _____
_____ (Company/Food Service Management Company) fully discloses all discounts, rebates, allowances, and incentives received by the Company from its suppliers. If the Company receives a discount, rebate, allowance, or incentive from any supplier, the Company must disclose and return to the _____ School District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the _____ School District. All discounts, rebates, allowances, and incentives must be returned to the _____ School District during a mutually agreed upon timeframe that is beneficial to the School District."

SFAs may also opt to use the language found in 7 CFR Part 210.21(f)(i):

"Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA."

It is important that SFAs consult with their own legal counsel regarding the use of any particular contract language, to ensure that all Federal, State and local requirements are met.

In addition to ensuring that SFA contracts contain appropriate language requiring the return of discounts, rebates, and applicable credits to the SFA, it is critical that SFAs monitor contract compliance on an ongoing basis and strictly enforce all contract provisions, including those related to the return of discounts, rebates, and applicable credits. In turn, SAs must implement the necessary safeguards and steps to ensure that the contract provisions are being enforced by SFAs and applicable incentives are actually recovered.

For further information call the Child Nutrition Division at 208-332-6820